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THE COURT: One other thing on the topic we were discussing. I see that in order to get into that topic, at least the way we're getting into it which is to say essentially would one of ordinary skill in the art have interpreted this patent in view of what RIMS said to be entrenching, severely entrenching on the claim construction question, and it -- I think it's possible to sort of it out so that it doesn't, but the way -- I think that to do that can present the possibility of confusion and prejudice to the jury, and it opens us up to some more testimony on the topic that I think will ultimately end up being confusing to the jury in respect to the claim construction situation.

13 So the only way I'm going to deal with this is for  
14 you to tell me in writing what questions you want to ask them  
15 and let me look at them one by one and see if they actually do  
16 what I apprehend. It seems to me that the responsible and  
17 necessary thing to do to protect the jury from confusion and to  
18 avoid unnecessary delay under 403 is to keep it out at this  
19 stage, but I'll review it if you submit written questions so I  
20 understand what they are. All right, get the jury, please.

21

(Jury in.)

23

24 THE COURT: All right, sorry. Please proceed, Mr.  
25 McDonald.

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1                   MR. McDONALD: Thank you, Your Honor.

2   Q   Good afternoon again, Dr. Weaver.

3   A   Afternoon, Mr. McDonald.

4   Q   I'd like to go to claim one of the '172 patent, if we can  
5   put that up on the screen, please.

6                   THE COURT: That's at tab four of your notebook.

7   Q   Dr. Weaver, is this one of the 12 claims that doesn't  
8   actually use the word catalog?

9   A   Yes, sir, it is.

10   Q   Can you summarize for me what your understanding is of the  
11   invention that's described by this claim?

12   A   That product data has been compiled into a database, and  
13   these items are from at least two vendors, and then when the  
14   database is searched, not all of it is searched at once.

15   Q   Now, there is a reference there in the first element  
16   beginning with the word database to the phrase selected  
17   portions of the database may be searched separately; do you see  
18   that?

19   A   Yes, sir.

20   Q   In your answer, I didn't hear you actually refer to that,  
21   so can you explain how that fits into what this claim is about?

22   A   Certainly. So in the search process, only portions,  
23   selected portions of the database will be searched. That's  
24   what I meant by not all of the database is searched.

25   Q   And so then going down to the third element, if we could

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1 highlight that, that refers to means for searching for matching  
2 items that match the entered product information in the  
3 selected portions of the database. Do you see that language?

4 A I do.

5 Q So is the idea here that the system is capable of having  
6 selected portions of the database searched separately, and then  
7 you can also do a search in that selected portion or portions?

8 A You can -- yes. You can -- the means for searching will  
9 look for matching items in the database by selecting -- by  
10 searching only selected portions of the database.

11 Q And do you have an understanding based on any  
12 communications with the inventors that a reason they wanted to  
13 add this feature was to avoid having to search big, bulky  
14 catalogs if certain catalogs were ones that the user knew the  
15 product they were looking for wasn't going to be in that one  
16 anyway?

17 A I did not talk to the inventors about that.

18 Q Do you have any understanding as to what the inventors'  
19 thought would be the benefits of a system as described in claim  
20 one of the '172 patent?

21 A Yes, I do.

22 Q What is your understanding?

23 A That's from reading the patent, and so my understanding is  
24 that you would not want to search the entire database because,  
25 as you suggest, it might be big and bulky and time-consuming.

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1       So it would be efficient to search only portions of the  
2       database.

3       Q       Is there a section of the -- description of the system in  
4       the patents that describes a way to implement claim one of the  
5       '172 patent?

6               THE COURT: Wait a minute. You are asking other two  
7       patents provide information about this patent?

8               MR. McDONALD: No. I meant to focus it on the '172  
9       patent. I'm sorry.

10              THE COURT: I think you said patents. Let's stay  
11       with the '172.

12       Q       I'm sorry. Dr. Weaver, is there a section of the '172  
13       patent that describes a way to implement this idea of selecting  
14       portions of the database to search separately and then search  
15       them?

16       A       There's a description of what that's about, but there's no  
17       code indicating the algorithm to do it.

18              MR. McDONALD: Could we turn in the '172 patent,  
19       please, to column nine. Beginning at line 55 at the bottom of  
20       column nine and continuing to the end of the column, highlight  
21       it, please.

22              THE COURT: What line do you begin, sir?

23              MR. McDONALD: 55, column nine of the '172 patent.

24       Q       Do you see that section up on the screen now, Dr. Weaver?

25       A       Yes, sir.

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1 Q That section here has a first sentence that says, when  
2 multiple catalogs are present in the catalog database 36,  
3 search program 50 contains a function associated with the  
4 catalog symbol of the footer bar and screen window, not shown,  
5 for selecting catalogs to be searched. Do you see that  
6 language?

7 A Yes, I do.

8 Q Are we in the right spot? Is this the part of the  
9 specification of the '172 patent that corresponds to a  
10 description of what's going on in claim one of the '172 patent?

11 A Yes.

12 Q And so then the next sentence, for example, the following  
13 choices might be available, and it's got a colon before a list;  
14 correct?

15 A Yes.

16 Q Then it's got a list there of four things; correct?

17 A Yes, it does.

18 Q Those four things are --

19 THE COURT: Wait just a minute. Maybe I  
20 misunderstood your question, but as I understand the claim one,  
21 it involves a database. It doesn't involve catalogs. It says  
22 when multiple catalogs are present in the database -- in  
23 catalog database, search program contains a function associated  
24 with catalogs symbol of the footer bar and screen window for  
25 selecting catalogs, and I thought that you had established that

1       this doesn't involve selecting, this claim doesn't involve  
2       selecting catalogs.

3                   MR. McDONALD: Well, I asked him what is the portion  
4       of the specification that corresponds to this and if there's  
5       anything else. I'm just trying to get a description in the  
6       patent that relates to this claim, Your Honor.

7                   THE COURT: How can a description in the patent that  
8       describes a catalog relate to a claim that doesn't involve  
9       catalogs? That's what -- maybe you can pursue that to see if,  
10      in fact, this is a correct focus.

11       Q       Well, Dr. Weaver, can you tell me why you understood that  
12      this section here of column nine of the '172 patent that I've  
13      been starting to quote from, this does correspond to the  
14      description in the patent of a preferred embodiment of claim  
15      one of the '172 patent?

16       A       It does, and, of course, you understand that that  
17      specification of the three patents is the same. So this is  
18      directly applicable to the other two patents, and because there  
19      is electronic storage, while there are no catalogs, I  
20      interpreted your question more broadly as referring to the  
21      contents of the database, but it's very clear this is talking  
22      about catalogs.

23       Q       So is this an embodiment in any way of a product that  
24      would be covered by claim one of the '172 patent?

25       A       I think it would be.

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1 Q And so we've got this list in this embodiment describing  
2 there are four catalogs; correct?

3 A In this example.

4 Q Right. This is the example at the bottom of column nine;  
5 correct?

6 A Correct.

7 Q And the patent describes them giving the user a chance to  
8 select which of those catalogs they want to search; correct?

9 A Correct.

10 Q What is your understanding as to why the user is given  
11 that opportunity to select catalogs?

12 A To avoid searching the entire database.

13 Q And then once those catalogs are selected as described  
14 here beginning at column nine, then the system does a search on  
15 the selected catalogs; correct?

16 A Yes.

17 Q So the user does the selecting; correct?

18 A Well, the user -- the user and the system together select.

19 Q Now, you did a report regarding your infringement opinions  
20 in this case; correct?

21 A I did.

22 Q And you understand that your testimony here needs to be  
23 consistent with that report; correct?

24 A Yes.

25 Q And that report is a complete description of your opinions

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1       in this case?

2       A      Yes.

3       Q      And that report does have discussion specifically of claim  
4       one of the '172 patent; correct?

5       A      Yes.

6       Q      Now, if we go -- return now to claim one on the screen,  
7       please. If you go to the fourth element here, that one has  
8       means for generating an order list that includes at least one  
9       matching item selected by said means for searching; correct?

10      A      Correct.

11      Q      The Court did construe the term order list; correct?

12      A      Yes.

13      Q      The Court construed that as a list of desired catalog  
14       items; correct?

15      A      Correct.

16      Q      In your opinion, you stated in your report, didn't you,  
17       that the accused Lawson systems satisfied the claim element  
18       that requires a list of desired catalog items. I'll rephrase  
19       that question. Your report says that in your opinion, the  
20       accused Lawson systems satisfy the element that includes this  
21       term order list; correct?

22      A      I did say something like that. If you'd like to point me  
23       to a particular part of my report, I can verify that.

24      Q      All right.

25            MR. McDONALD: May I approach, Your Honor?

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1           THE COURT: Does he need both of those?

2           MR. McDONALD: I gave two so you could have one.

3           THE COURT: Okay. I didn't know whether it was a  
4 different product. Thank you.

5           Q     Turn to page 85 of your report, Dr. Weaver.

6           A     85.

7           Q     Do you see at the bottom of page 85 there, Dr. Weaver,  
8 there is a paragraph -- excuse me. This is your expert report  
9 you did on infringement for this case, the initial report;  
10 right?

11          A     Yes, sir, it is.

12          Q     This is where you tried to put all your opinions in  
13 together with the appendixes that are referenced in here;  
14 right?

15          A     Right.

16          Q     In paragraph 195 here of page 85, do you see there where  
17 you start off by saying, quote, further, I understand that the  
18 Court has construed the claim term order list as used in claim  
19 one of the '172 patent as, quote, a list of desired catalog  
20 items, period, close quote; do you see that?

21          A     Yes.

22          Q     Then you went on to say, in my opinion, the accused Lawson  
23 systems satisfied this element do; you see that?

24          A     Yes.

25          Q     Then you went on to provide the reasons for that opinion;

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1       correct?

2       A     Sure.

3       Q     And then the next sentence said, desired items included in  
4     results of searches of product catalogs, which then put in  
5     parentheses as, quote, catalog items, quote, may be selected  
6     and placed in a, quote, shopping cart, quote. This shopping  
7     cart constitutes an order list. See appendix three at 66-67.

8       Do you see that?

9       A     I do.

10      Q     So isn't it true that your opinion about why the Lawson  
11     systems satisfied claim one of the '172 patent, and  
12     specifically the portion of that claim that refers to an order  
13     list was based in part on your analysis concluding that desired  
14     items included in results of searches of product catalogs which  
15     you called catalog items may be selected and placed in a  
16     shopping cart; correct?

17      A     Correct.

18      Q     I'd like to turn now to the diagrams you had where you  
19     stacked all the different systems on top of each other. Can we  
20     turn to, I think it's slide number 13?

21           THE COURT: Are you using theirs? Do you need him to  
22     do that, or do you have --

23           MR. McDONALD: We cheated and got a copy of theirs to  
24     put on our system.

25           THE COURT: That's not cheating. That's just being

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1 efficient.

2 Q Dr. Weaver, you can use either the paper version or the  
3 one up on the screen. Let me know when you're ready, please.

4 A Okay.

5 THE COURT: What exhibit is this, Mr. McDonald, so we  
6 know about it?

7 MR. ROBERTSON: It's not an exhibit, Your Honor.

8 It's simply a demonstration by Dr. Weaver.

9 Q Ready?

10 A Yes.

11 Q So this looks familiar, right, from your examination by  
12 Mr. Robertson, I trust?

13 A Yes.

14 Q This first slide here that's up on the screen shows the  
15 yellow rectangle which is platform technology foundation;  
16 correct?

17 A Correct.

18 Q It's got two little dashed boxes in it called Lawson  
19 system foundation and process flow; right?

20 A Correct.

21 Q Now, it's your opinion that what's shown here, that  
22 doesn't infringe any claims; correct?

23 A Not by itself.

24 Q Now, with the technology, platform technology foundation,  
25 are there any other aspects to that that you are talking about

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1 other than the Lawson system foundation and process flow?

2 A No, because when I looked at the procurement suite, the  
3 requisitions and the inventory control, requisitions module all  
4 require these two fundamental --

5 Q I guess I was asking that question because the fact that  
6 those two boxes for Lawson system foundation and process flow,  
7 they only take up a little part of this big yellow box, but  
8 really, are they the whole yellow box, in effect?

9 A No, there's more.

10 Q There is more. What else would be in there?

11 A These are the only two relevant to our discussion.

12 Q Okay, but do you know what else is in there or not?

13 A I don't.

14 Q But in any event, that one does not infringe even with  
15 whatever foundational modules there are; is that fair?

16 A Yes.

17 Q So now we go to the next slide, 14. This is, I think --  
18 system number one is sometimes how this was referred to; right?  
19 The Lawson accused system with the purchase order,  
20 requisitions, and inventory control modules on top of the  
21 foundation; right?

22 A Correct.

23 Q Can you show -- can you use the press-sensitive screen  
24 here and show me, in this system here, where is it, if  
25 anywhere, that you understand vendor data is loaded into the

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1       Lawson system? Where does it come into the Lawson system?

2       A     Through the inventory control module.

3       Q     And then the data, as I understand your testimony, it  
4       winds up in the item master?

5       A     Correct.

6       Q     And you would agree that it's changed somehow from when it  
7       comes in; right?

8       A     It can be changed. There are programs that will convert  
9       it if needed.

10      Q     Are there some times, in your opinion, it doesn't change  
11       at all from how it comes into the Lawson system?

12      A     That's possible.

13      Q     Do you know whether that's actually a function that the  
14       Lawson system has or not?

15      A     No, but it's common sense if you are moving data from one  
16       Lawson system to another Lawson system, it would not need  
17       reformatting, so I think it's plausible that it works without  
18       reformatting.

19      Q     And the data as reformatted if necessary, where does it  
20       wind up?

21      A     In the item master and vendor item table. Excuse me.

22      Item master and vendor item table.

23      Q     Are those things a database?

24      A     Collectively, along with an item location table, yes.

25      Q     Where in this picture we have up on the screen right now,

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1      Exhibit 14, where is that database that has the item master  
2      locator?

3      A      Inventory control.

4      Q      Can you show that on the screen? So it's inside that box  
5      called inventory control?

6      A      It's part of this procurement module.

7      Q      Okay. That is different. So let me clarify what you mean  
8      by that. Can you show me again, put a circle or box where you  
9      would say the item master is. It looks to me like you circled  
10     inventory control. Is that what you were doing?

11     A      We were talking about what has access to the item master.  
12     All of these have access, so -- I'm sorry, but I don't really  
13     understand the question.

14                THE COURT: Before you clarify, were you saying --  
15     did I understand you correctly to say that item master and  
16     vendor master, along with something else, is a database? What  
17     was the something else?

18                THE WITNESS: The something else was an item location  
19     table.

20                THE COURT: Thank you. Sorry.

21     Q      So my question, Dr. Weaver, I'm not asking about access,  
22     so let's put that concept aside for the moment. I'm just  
23     talking about, there is a database. That's some computer  
24     semiconductors where the data is actually stored; is that  
25     right?

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1 A No, sir.

2 Q What's a database?

3 A A database is a data structure. Typically it's on  
4 magnetic disk, but the media is not the question. I understand  
5 that. So it's -- in this case, it's a relational database.

6 Q Is it a set of information that's computer readable?

7 A Yes.

8 Q Where is that set of computer information that is  
9 readable, that's a database, located in this picture up on the  
10 screen right now, number 14?

11 A It is accessed here through the inventory control module.

12 Q That's where we're getting a little hung up, because I  
13 didn't ask where it's accessed, so please listen to my  
14 question. Where is the item master database located, Dr.  
15 Weaver?

16 A In this module.

17 Q And you circled the S3 procurement modules?

18 A Yes.

19 Q So is it not located then specifically in the inventory  
20 control module?

21 A Inventory control has access to it.

22 Q So by saying it has access then, are you saying it's not  
23 actually located in that module?

24 A No.

25 Q Okay. So can you explain to me whether or not the item

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1 master is located in the inventory control module?

2 A I'm not making myself clear. Multiple modules have access  
3 to item master and inventory control. I'm sorry, to item  
4 master and vendor item table, and inventory control is the one  
5 that does the most with it.

6 Q Please listen to my question, because I'm not asking which  
7 modules use it or which ones access it. I'm simply asking,  
8 where is it? Where is the item master in what you represented  
9 to be a complete infringing system in slide 14?

10 A Inventory control.

11 Q It's inside the inventory control module?

12 A See, that's where we have this disconnect.

13 Q Okay. Well, when you make that circle around the word  
14 inventory control in response to my question where is the item  
15 master, please explain what you meant when you did that.

16 A The modules have access to the database.

17 Q Okay. So you do understand which modules access the  
18 database is a different question from where is the database;  
19 right?

20 A Right.

21 Q So please listen to my question. Where is the database?

22 A The best -- the closest I can get to your answer is to say  
23 that it is primarily accessed by the inventory control module.  
24 It doesn't have a physical location. That's, perhaps, our  
25 disconnect. The database is used by inventory control.

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1 Q Is there information in the item master located at  
2 anyplace in the system that you've depicted here as an  
3 infringing system in slide 14?

4 A Yes.

5 Q Where is the data?

6 A Well, the data is in the database.

7 Q Where is the database?

8 A That's what we're discussing.

9 Q Now we are back to it doesn't have a physical location?

10 A This is a depiction, so it's not like I can, you know,  
11 draw a picture of a database here and say it's located at a  
12 particular spot. A database is part of the overall system, and  
13 it's accessed by inventory control.

14 Q As part of your work in this case, did you determine where  
15 in a Lawson system that database is located?

16 A No.

17 Q Do you know whether or not the item master database is  
18 located either in the blue module or the yellow module that  
19 you've represented together as a complete and comprehensive  
20 infringing system?

21 A It is in there.

22 Q How do you know that?

23 A Because that's the way the system works.

24 Q Have you seen any documents that would tell you the item  
25 master database is located either in the S3 procurement modules

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1       or the platform technology foundation as you've represented  
2       here in exhibit or slide 14?

3       A      I don't remember a specific document.

4       Q      Let's go to slide 15, please. Now, this is the second of  
5       the systems that you have represented here as complete  
6       infringing Lawson systems; correct?

7       A      Correct.

8       Q      And you would agree that any complete infringing system  
9       has to have an item master; right?

10      A      Yes, and it's in there.

11      Q      Where is it on slide 15, Dr. Weaver?

12      A      There's the database. It is associated with all of these  
13       modules.

14      Q      So that database isn't actually shown in slide 15.

15      A      Well, not specifically, but it's there.

16      Q      It's not shown, but it's there; is that your answer?

17      A      Sure. It is a part of a complete system.

18      Q      So between that green -- this system here on 15, just to  
19       be clear, this is the one with the yellow platform technology  
20       foundation at the bottom level; correct?

21      A      Yes.

22      Q      And the middle level is the S3 procurement modules; right?

23      A      Yes.

24      Q      And this one is different from the last slide because it's  
25       also got requisition self-service in a green box on top; right?

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1 A Yes.

2 Q Can you tell me whether or not it's your understanding  
3 that the item master that is required for infringement is  
4 either in the green box, the blue box, or the yellow box as you  
5 presented it here?

6 A It's in the blue or the yellow or both boxes.

7 Q How do you know that?

8 A Because the requisitions in inventory control that make  
9 use of that access that database.

10 Q Have you seen any documents with respect to the  
11 configurations shown here in slide 15 that would indicate to  
12 you where that required item master would be in any of the  
13 green, the blue, or the yellow boxes shown here on slide 15?

14 A I don't have a document, but in order for the system to  
15 work, that database has to be there.

16 Q Does it have to be there in order for it to work?

17 A Yes.

18 Q This is your testimony as a professor of computer science;  
19 right?

20 A Yes.

21 Q Can we go to slide 16 now? Slide 16, this is just like  
22 slide 15 which included requisition self-service, only now this  
23 one has procurement Punchout on top; correct?

24 A Correct.

25 Q This is another system here in slide 16 that you have

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1       represented is a complete system that satisfies all elements of  
2       the claims in this case; correct?

3       A       Well, no, not elements of all claims, no.

4       Q       Fair enough. I overstated that one. Do you represent  
5       that this system with the four boxes shown here on slide 16,  
6       that is a system that infringes some of the claims in this  
7       case?

8       A       Correct.

9       Q       Are you representing to us that this version here with  
10      procurement Punchout, as depicted in slide 16, includes within  
11      those four boxes an item master?

12      A       Yes.

13      Q       Where is it in slide 16? Where is that item master?

14      A       Same place it's been in all the other slides.

15                  THE COURT: Is it ever going to move?

16                  THE WITNESS: No, sir, it's not.

17                  THE COURT: Let's don't go into this anymore.

18       Whether you like it or not or accept it doesn't make any  
19       difference. We don't need to go through every system and say  
20       it changes. It's sufficient to say, does it ever change. He  
21       said, no, it doesn't change, so there it is. Whether it's  
22       right or not is up to you to deal with.

23                  MR. McDONALD: I understand. I just want to make it  
24       clear for each system, as we add more boxes, I want to give him  
25       another chance to answer that question just to be clear.

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THE COURT: I solved your problem by asking the question and asking if it ever moves, and he said, no, it never moves, it's always in the blue or yellow somewhere. Exactly where, he doesn't know.

Q     And with respect to this embodiment shown in slide 16, Dr. Weaver, with the procurement Punchout specifically in there, do you recall seeing any documents or information relating to where the item master is for that configuration?

A It has got to be in these two boxes.

Q      Not my question.

A I do not have a specific document.

Q Did you get any information other than through a document related to where the item master would be in the procurement Punchout system?

A No.

Q And then finally, if we look at slide 17, this is the system just --

THE COURT: What do you want, Mr. Robertson?

MR. ROBERTSON: I wanted to renew the Judge's objection. Your Honor, we're just going to keep repeating this.

THE COURT: He is not going to repeat it because I've already told him he's not going to be. He might have something else to say.

MR. McDONALD: I'll try to keep it short.

Weaver - Cross

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1                   THE COURT: Keeping it short and not repeating are  
2 two different things. You understand the difference?

3                   MR. McDONALD: Yes, and I'm going to try very hard to  
4 maintain it.

5                   THE COURT: Don't go where I've told you not to go.  
6 We've already established that. The jury understands it, and  
7 you don't need -- it's a very dramatic effect but to no avail  
8 because it's been established.

9 Q                 So this the embodiment with the electronic data  
10 interchange together with procurement Punchout and requisition  
11 self-service; correct?

12 A                 Yes, it is.

13 Q                 Did you see any documents or information, Dr. Weaver,  
14 relating to any embodiments with electronic data interchange  
15 that would indicate where the item master was?

16 A                 No.

17 Q                 Would you agree that the Lawson employees that deal with  
18 Lawson's procurement modules would have a better understanding  
19 of the Lawson system than you?

20 A                 Probably.

21                   MR. McDONALD: I have no further questions. Thank  
22 you.

23                   THE COURT: Redirect?

24

25

1

REDIRECT EXAMINATION

2

BY MR. ROBERTSON:

3

Q Dr. Weaver, what was the purpose of this demonstrative?

4

A This is why I had so much trouble with the question. It's an abstraction. It's not a concrete delineation of exactly where things are. Software isn't like that. Doesn't don't work that way.

8

Q Were you trying to make some complex notions simple?

9

A Simple.

10

Q So we could kind of grasp what the actual accused products were?

12

A I was. I thought it was unfair to ask the jury to read all that.

14

Q You have seen figures that can depict software architecture and hardware to demonstrate specific locations of where a database might reside; correct?

17

A I have.

18

Q Is that what you were trying to accomplish with this?

19

A It was not.

20

Q Let me ask you this question which wasn't asked: Does it matter where the item master database is located?

22

A No.

23

Q Why doesn't it matter?

24

A Because all of these modules that need to use it have access to it.

25

Weaver - Redirect

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1       Q     What do you mean? Can you explain when it says all these  
2     modules that need to use it have access to it? That's a  
3     complex notion for me.

4       A     Sure. Okay, so when you load data from a vendor catalog  
5     into the item master, there's a program to do that. When you  
6     do a search for an item, you are searching the item master. So  
7     the search program in requisitions or in requisitions  
8     self-service has access to it.

9                 So from a computer science perspective, all that's  
10    important is that the database exists and that software can use  
11    it. Where it is is just irrelevant.

12       Q     Did you see any documentation that said the Lawson system  
13    could function without an item master?

14       A     Oh, oh, no.

15       Q     Now, you were asked, I think -- actually, can I borrow  
16    Defendant's Exhibit 257 which, I believe, is the Sears catalog?

17                 THE COURT: Now, you objected to him going into it,  
18    and I sustained it.

19                 MR. ROBERTSON: Your Honor, I think there were  
20    several questions asked about --

21                 THE COURT: Be careful, and remember, we're not  
22    litigating Sears.

23                 MR. ROBERTSON: I understand.

24                 THE COURT: There were some questions to which you  
25    did not object, though. We'll see.

Weaver - Redirect

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1                   MR. ROBERTSON: Defendant's 257, I believe.

2   Q   Now, Doctor, we can all agree that this is a paper  
3   catalog; correct?

4   A   Sure, it is.

5   Q   Not an electronic catalog; is that right?

6   A   It is not.

7   Q   Now, let's just assume for purposes of our discussion that  
8   this catalog constitutes a database; okay?

9   A   Yes.

10   Q   Is that fair, it's a collection of data?

11                  MR. McDONALD: Your Honor, this is beyond the scope  
12   of what I was allowed to do on cross.

13                  THE COURT: I'm not sure it was. Overruled.

14   Q   This is a collection of data; correct?

15   A   It is.

16   Q   You were -- a number of items were identified here that  
17   were for sale that had item information?

18   A   Right. We looked at one.

19   Q   Price, description?

20   A   Right.

21   Q   Manufacturer, vendor?

22   A   Right. We had the part -- not the part number but the  
23   item number.

24   Q   And if I clip up to this, it has an index, too, that I can  
25   go, and I can look up, for example, where I want to find

1       watches.

2                   MR. McDONALD: Object, Your Honor. Beyond the scope  
3 of cross.

4                   THE COURT: You are getting there.

5       Q     So if I was going to maintain an electronic database,  
6 would I maintain it like a paper catalog?

7       A     Well, you would certainly have your items such that they  
8 would be indexed so that you could get to them quickly.

9       Q     But wasn't one of the advantages of the invention that you  
10 no longer had to do a paper catalog and flip through it, but  
11 you could actually access electronic data quickly and readily?

12      A     Absolutely.

13      Q     Thank you. Is it easier to navigate an electronic  
14 database using an index than flipping through a paper catalog?

15      A     Yes, sir.

16      Q     You were asked whether or not the Lawson system -- let me  
17 ask this: Does the Lawson system permit you to make informed  
18 decisions about purchases?

19      A     Yes.

20      Q     Does it matter, for purposes of your infringement  
21 analysis, who selects the catalog data to include in the item  
22 master?

23      A     No.

24      Q     Do you know whether or not the claims even speak to that?

25      A     They do not.

1 Q And does the Court's claim construction specify anywhere  
2 as to whether it matters who selects the items to be included  
3 in the item master?

4 A Well, the Court's claim construction here says nothing  
5 about the choice of who is choosing catalogs.

6 Q So it doesn't matter if it's the customers or Lawson or  
7 some third party?

8 A According to the claim construction, it does not.

9 Q Does it matter in the Court's claim construction how  
10 detailed the textual description of the item is?

11 A No, it does not.

12 Q Does it matter -- let's assume for purposes of this  
13 discussion that it's the customer who is taking the information  
14 that is obtained from a vendor and reformatting it in some  
15 manner when it loads that catalog data. Does it matter, under  
16 the Court's construction, whether that's reformatted in some  
17 way?

18 A Not under the Court's construction.

19 Q Does it matter in some way if the customer takes out some  
20 of the data about the catalog item as long as it meets the  
21 Court's construction?

22 A No, sir, as long -- the answer is no, it doesn't matter.

23 Q It's conceivable that the customer could take out all the  
24 data, but then it wouldn't be a real description about an item,  
25 would it?

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1 A It would not.

2 Q Now, you were asked about whether you had -- you were  
3 asked about whether you looked at how Lawson customers used the  
4 Lawson system. Do you recall that?

5 A Sure.

6 Q Other than the handful of deposition testimony you were  
7 given from the Lawson customers, did you have access to any  
8 Lawson customers to see how they were utilizing the system?

9 A No. In fact, I asked for that, but I never got a reply.

10 MR. McDONALD: Can we have clarified who he asked?

11 THE COURT: What's that?

12 MR. McDONALD: Could we clarify who he asked? I  
13 think that the answer was nonresponsive to the question.

14 THE WITNESS: I asked the attorneys if there was more  
15 information, and the answer was, no, this is what we had.

16 Q And did you review --

17 THE COURT: I think he wants to know which attorneys.

18 Q Which attorneys did you ask?

19 THE COURT: ePlus's or Lawson's?

20 THE WITNESS: Ms. Albert.

21 Q And when you asked ePlus's counsel if they could obtain  
22 that information, did they actually provide you with  
23 interrogatory answers in which ePlus had asked Lawson to  
24 provide, on a customer-by-customer basis, all of the  
25 information as to how they implemented the Lawson customer

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1 systems?

2 A No.

3 Q Did you ever receive that customer-by-customer information  
4 as to their implementation?

5 A No.

6 Q Were you aware that ePlus asked the Court to compel Lawson  
7 to provide that information?

8 A Yes.

9 Q And were you aware that the Court granted that motion to  
10 compel?

11 A Yes.

12 Q And are you aware that Lawson still failed to provide that  
13 information on a customer --

14 MR. McDONALD: Objection, Your Honor. This is  
15 outside of the record, and there is no record of failure to  
16 comply with the Court's order.

17 THE COURT: Well, it certainly is a relevant issue  
18 based on your questioning, but I'm not sure this is the  
19 appropriate place to deal with that.

20 MR. ROBERTSON: I'll take it up at another time, Your  
21 Honor.

22 Q The Judge actually had a question about when you are doing  
23 Punchout procurement as to whether or not Lawson received a  
24 payment every time a Lawson customer uses their system to  
25 access a Punchout partner and purchase an item. Do you recall

Weaver - Redirect

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1       that?

2       A     I remember the question.

3       Q     And does it matter, for the purposes of your analysis for  
4     infringement, whether or not Lawson receives a payment when a  
5     customer uses the Lawson Punchout system?

6       A     Certainly not. That's not any part of the claims.

7       Q     Do you know whether Lawson receives fees, sometimes tens  
8     of thousands, hundreds of thousands of dollars for licensing  
9     this software?

10      A     Yes.

11      Q     Is that your understanding as how Lawson receives  
12     compensation for these products?

13      A     Well, the licensing of the software as well as the  
14     professional services.

15      Q     So Lawson receives fees also --

16                    MR. McDONALD: Your Honor, we object as outside the  
17     scope of cross.

18                    MR. ROBERTSON: Fair enough, Your Honor. This was a  
19     question raised by the Court, so I'll move on.

20                    MR. McDONALD: Actually, I move to strike those  
21     answers that were related to Lawson's revenues.

22                    MR. ROBERTSON: I think it was within fair scope of  
23     followup of the Court's question. I just wanted to --

24                    THE COURT: Objection to the last question is  
25     sustained. The request to strike the answers is not.

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1 Previously given.

2 Q Can the customer select the Punchout sites that it wants  
3 Lawson to provide that customer with access to?

4 A Not only can it, it does.

5 Q And then does Lawson actually facilitate access to those  
6 Punchout partner sites?

7 A Absolutely. We spent some time discussing that.

8 Q Did you have access to any of the Lawson customer source  
9 code?

10 A No.

11 MR. McDONALD: Object to that as to vague as to what  
12 Lawson's customer source code is.

13 MR. ROBERTSON: Well, you asked the Doctor if he had  
14 access to the Lawson customer source code. I'm just asking the  
15 Doctor if it was provided in any way.

16 MR. McDONALD: I never that. We were asking about  
17 the vendors.

18 THE COURT: I don't remember that question, but --

19 MR. ROBERTSON: I had a note of it, Your Honor, but  
20 I'll move with on. I'll withdraw the question.

21 THE COURT: There was a question about the vendor  
22 source code, but I don't think there was one about customers.

23 Q Did you have access to the vendor source code?

24 A No.

25 Q Can you also use the EDI module to obtain information on

Weaver - Redirect

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1 availability of inventory?

2 A Absolutely. We talked about that PO 850, the purchase  
3 order -- I'm so sorry, Your Honor -- and the PO 855, purchase  
4 order acknowledgment, that could contain information on whether  
5 an item was available in inventory.

6 Q Now, Dr. Weaver, claim one of the '172 patent, if you  
7 could look at that for a moment. Maybe we can bring that up on  
8 the screen.

9 You were asked some questions about your report and  
10 whether a database -- when we refer to the database here as a  
11 catalog; do you recall that?

12 A Yes.

13 Q Were you attempting in your report to perform a claim  
14 construction on this first element as to what a database  
15 containing data relating to items associated with at least two  
16 vendors means?

17 A No. That's not my job.

18 Q So you weren't trying to rewrite this claim in any way,  
19 were you?

20 A No, sir.

21 Q Confirm for me that the claim does include the term  
22 database; correct?

23 A It does say database.

24 Q I'm sorry. Let me rephrase the question. It doesn't  
25 include the claims term catalog which the Court has construed;

Weaver - Redirect

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1       is that right?

2       A     It does not contain the term catalog.

3       Q     I just want to have some clarity here if I can, because I  
4       want to make sure I understand it, on what constitutes the  
5       catalogs in the Lawson accused systems, and for this I think we  
6       can talk about all five configurations. So can you tell us,  
7       because I do recall the Judge had a question, so what is it?

8       A     It's the item master and the vendor item table.

9                  THE COURT: So that's a catalog?

10                 THE WITNESS: It contains data from catalogs.

11                 THE COURT: But is that a catalog within the meaning  
12       of the claim construction as you see it?

13                 THE WITNESS: It is a catalog, and it is many  
14       catalogs. It's important that I make clear that it contains  
15       items from many catalogs, in the plural.

16                 THE COURT: All right. And then is there any other  
17       catalog in the Lawson system?

18                 THE WITNESS: No, sir. It has only one database.

19       Q     I guess my question is, do those two tables need to have  
20       item data in them to constitute the catalogs?

21       A     Absolutely.

22       Q     So in addition to those two tables, we need actual data;  
23       correct?

24       A     Oh, yeah. The tables are the repository of the data.

25                  THE COURT: Before you leave that area, I'm confused,

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1 and I'd like some clarification. Keeping in mind the Court's  
2 construction of the term catalogs/product catalog, are the  
3 Punchout catalogs also catalogs within the meaning of the claim  
4 construction in your opinion, or are they not?

5 THE WITNESS: They are.

6 THE COURT: So then there are two kinds of catalogs  
7 that we deal with. One is item master plus vendor item table,  
8 and the other is the Punchout catalogs.

9 THE WITNESS: Your Honor, you are correct, and the  
10 point I was trying to make is that the Lawson item master and  
11 vendor item table, which are collectively the database, you  
12 could -- it contains item data from many external catalogs.

13 Q We were referring to that internal catalog that you  
14 indicated is the item master table and the vendor table with  
15 data?

16 A Right.

17 Q As the internal catalog; is that right?

18 A Yes.

19 Q And this Punchout catalog, what's the shorthand we've been  
20 using to refer to those catalogs?

21 A Those are external catalogs.

22 Q And in particular, there was one claim -- I believe it was  
23 dependent claim two in the '516 patent -- which required  
24 catalogs to be stored separate databases; do you recall that?

25 A I have that in front of me.

Weaver - Redirect

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1 Q So in that claim, what did you find constituting a  
2 separate database?

3 A Those were the separate databases of the external Punchout  
4 sites.

5 Q There was some questions about keyword search. If I  
6 search for a keyword, and it generates a matching item -- will  
7 it generate a matching item for any vendor who is offering  
8 items that match that keyword?

9 A Yes.

10 Q So if I use a keyword laptop, and the Lawson accused  
11 system has ten different catalogs, Dell, Hewlett Packard, IBM,  
12 Sony, that are all selling laptops, what will happen when I hit  
13 the enter button on that search?

14 A The search engine will find all of the items containing  
15 that keyword, display multiple items from multiple vendors.

16 Q So have I searched the catalogs that have any of those  
17 items that match my keyword?

18 A The ones that match the keywords, yes.

19 Q Could claim two also be satisfied by a system having  
20 internal database plus an external Punchout database?

21 A Sure.

22 THE COURT: Is that it?

23 MR. ROBERTSON: That's it, Your Honor. Thank you.

24 THE COURT: Ladies and gentlemen, we're going to take  
25 about a 15-minute recess.

1

2 (Recess taken.)

3

4 THE COURT: Where is Dr. Weaver? You don't need to  
5 come up. They're going to need you back in the defendant's  
6 case. And, of course, you're probably going to be called in  
7 the plaintiff's rebuttal case, so you are released to go about  
8 your business upon your agreement to come back when we need  
9 you, and I assume you'll do that. Thank you for being here.

10

THE WITNESS: Yes, sir, thank you, Your Honor.

11

MR. McDONALD: I was going to say, this question  
12 actually might involve him helping us answer it.

13

THE COURT: Oh, okay. Why don't you sit down there  
14 for a minute. We might need you. Thank you. That was a good  
15 catch.

16

Did you get the question from the juror? The item  
17 master plus the item table plus the item something equals a  
18 database. I think that was the item master plus the vendor  
19 table plus the vendor item locator.

20

THE WITNESS: Item location table.

21

THE COURT: But I think it's probably -- if you all  
22 don't stipulate to that, maybe you better have him testify to  
23 it.

24

MR. McDONALD: It might be in the transcript where we  
25 could read it back if we have a transcript --

THE COURT: I think we had a different court reporter. We'll just -- come on back to the stand for a minute, and get the jury, please. Thank you very much.

(Jury in.)

THE COURT: I'm going to mark this as Court  
Exhibit 1.

MS. STOLL-DeBELL: Your Honor, I was going to step out and tell Mr. Lohkamp he can leave.

THE COURT: Mr. Who?

MS. STOLL-DeBELL: One of our witnesses.

MR. McDONALD: She's just going to step out of the courtroom for a moment.

THE COURT: Oh, sure.

MR. McDONALD: I could have said that much better.

THE COURT: I just had a little trouble hearing.  
You'll I understand that when you get older.

All right, ladies and gentlemen, who is going to ask this question to get it straight? Mr. Robertson, do you want to go ahead?

MR. ROBERTSON: Sure. Dr. Weaver, there's been a question concerning what the, I guess the catalogs of the Lawson systems are, and --

THE COURT: No. The question is the database. He

1       testified earlier about a database, and then I asked him a  
2       question, and the question is, the item master plus the item  
3       table plus the item question mark equals a database, and that  
4       really wasn't what he said, but it was close.

5               Will you recite, sir, what you said was the database  
6       in response to the question we were talking about earlier?

7               THE WITNESS: Yes, Your Honor. The database is the  
8       item master, the vendor table, and the item location table.

9               THE COURT: Item location table is the other question  
10      mark. All right.

11              MR. ROBERTSON: Can I ask you what database is that,  
12      Dr. Weaver?

13              THE COURT: That's fine. You can ask that question.  
14      Then Mr. McDonald, since he's the one that started it all  
15      anyway, can have a shot at it, too.

16              THE WITNESS: That's the Lawson database.

17              MR. ROBERTSON: Thank you.

18              THE COURT: Mr. McDonald, do you want to ask him  
19      anything?

20              MR. McDONALD: Nothing else, Your Honor.

21              THE COURT: All right, Dr. Weaver, you're excused  
22      subject to the recall we talked about a little while ago.

23              THE WITNESS: Thank you, Your Honor. Thanks to the  
24      jury.

25              THE COURT: All right, your next witness, please,

1       sir, Mr. Robertson.

2                    MR. ROBERTSON: (No response.)

3                    THE COURT: Mr. Robertson is resting his case.

4                    MR. ROBERTSON: I'm sorry, Your Honor. No, Your  
5                    Honor, we have a deposition, video deposition of Mr. Jeffrey  
6                    Frank, a vice president of marketing for Lawson.

7                    THE COURT: All right. Ladies and gentlemen, a  
8                    deposition is something that occurs before the trial, and in  
9                    the course of the pretrial proceedings, the lawyers for each  
10                  side get together, and they ask a witness certain questions.  
11                  And the witness is testifying. In this instance, this witness  
12                  is an officer of Lawson, and I'll give you further instructions  
13                  about how you consider the testimony of officers of a  
14                  corporation, but it's just as if Mr. Frank was sitting right  
15                  there and testifying. You're just going to see it on  
16                  television, because they are entitled to do that.

17                  MR. ROBERTSON: There would be some exhibits with Mr.  
18                  Frank's testimony, and I have a copies of his transcript if the  
19                  Court and law clerk would like them.

20                  THE COURT: Does the jury need exhibits?

21                  MR. ROBERTSON: They will ultimately get the exhibits  
22                  in the jury room.

23                  THE COURT: I mean are they shown on the screen.

24                  MR. ROBERTSON: They will be depicted on the screen  
25                  as we're going through the video.

1                   THE COURT: Okay. All right, is your screen all  
2 right? All right, you don't need it dark. All right, thank  
3 you.

4

5                   (Videotaped deposition of Jeffrey P. Frank played.)

6                   (Playback interrupted.)

7

8                   MR. McDONALD: We thought this was going to be the  
9 stipulated version of the video. It does not appear to be the  
10 one we had worked out.

11                  THE COURT: You mean -- is it up to here?

12                  MR. McDONALD: I think up to just a couple minutes  
13 ago it was, yes. It looked familiar. If we can take it off  
14 the screen for a moment, please.

15                  THE COURT: Beginning with where?

16                  MR. McDONALD: I think actually number 22 at page  
17 ten, somewhere around there.

18                  THE COURT: About the initial licensing component?  
19 Is it fair to say that for products such as this, Lawson  
20 generates revenues for all four of those categories, is that  
21 what you're talking about?

22                  MR. McDONALD: Yes. Actually, number 22 -- back it  
23 up a little bit, but that's close enough.

24                  THE COURT: I don't have -- yes, 22 --

25                  MR. McDONALD: There's an entry number 22nd that

1 begins at 88:06. That's where I would start.

2 THE COURT: Where do you end?

3 MR. ROBERTSON: Your Honor, could I just be heard  
4 briefly?

5 THE COURT: First I'd like to define what we're  
6 talking about.

7 MR. McDONALD: I think I would end it at least 11:08,  
8 Your Honor, without reading further. Actually, it may continue  
9 from there as well. It does not end at 11:08.

10 THE COURT: Does it include all of 22, item 22?

11 MR. McDONALD: Yes, all of item 22 --

12 THE COURT: Over to 23?

13 MR. McDONALD: Yes, it continues with item 23.

14 THE COURT: Down to where?

15 MR. McDONALD: All of 23, yes. 24, I can't tell.  
16 That's a question and answer. I can't tell the context of  
17 that. 25 would seem to include a string that is one we would  
18 dispute as well.

19 I have to say, I honestly don't have the actual  
20 stipulated parts, but this stuff looks specifically like things  
21 I thought had actually been excluded by the Court.

22 THE COURT: Well, that goes all the way down through  
23 25, that topic does.

24 MR. McDONALD: I believe you are right.

25 THE COURT: Just so I understand, your objection is

1       that you all -- you thought you had stipulated, and this was  
2       not in what was a stipulated version; is that where you are?

3            MR. McDONALD: That's right, Your Honor. Honestly, I  
4       don't have a copy of what was stipulated, but the subject  
5       matter looks like the stuff that was not, so if they can tell  
6       me I'm wrong, I'm happy to see that. I'm trying to track it  
7       down myself.

8            THE COURT: All right, Mr. Robertson, please say  
9       whatever you need to say.

10          MR. ROBERTSON: Your Honor, this was sent to them.  
11       I'm trying to locate the exact email, but this was stipulated  
12       and provided to them with all the exhibits. This was the exact  
13       content of what was sent to them. I can explain the  
14       relevance --

15          THE COURT: Do you have -- right now, that's not the  
16       issue. The issue is stipulation. Do you have the  
17       communication that sent the email to them so you can see what  
18       they are talking about, and who did you deal with on it? Who  
19       dealt --

20          MR. ROBERTSON: Mr. Strapp sent the email, Your  
21       Honor.

22          THE COURT: Who did you deal with, Mr. Strapp?

23          MR. STRAPP: Mr. Schultz.

24          THE COURT: Have you read this text here that he's  
25       saying he's objecting to now, sir?

1                   MR. SCHULTZ: Your Honor, it was not me personally  
2 who read the text.

3                   THE COURT: Who did? Did somebody read the text?

4                   MR. SCHULTZ: Yes, Your Honor. It was our staff who  
5 went through the text.

6                   THE COURT: And you agreed with this or not?

7                   MR. SCHULTZ: Your Honor, in the conversations that  
8 we had with ePlus's counsel, we discussed there were two  
9 aspects that needed to be taken out. One dealt with M3, the  
10 other dealt with financial information that the Court has  
11 stricken.

12                  THE COURT: All right. And did you get that  
13 information, Mr. Strapp?

14                  MR. STRAPP: Your Honor, I believe that the clips  
15 that are being shown to the jury are the same clips that were  
16 stipulated to by Lawson --

17                  THE COURT: Wait just a minute. Did you get the  
18 information that the financial information was to be taken out  
19 because they weren't stipulating to that? Did you get that;  
20 yes or no?

21                  MR. STRAPP: No. I believe that the information in  
22 here is information that was provided by Lawson. Your Honor,  
23 we can resolve this by going back to the written correspondence  
24 between the parties, but --

25                  THE COURT: Yes, I would think that's what I was

1 asking. Do you have any of that here?

2 MR. STRAPP: We have the information in the  
3 conference room that's right outside the courtroom.

4 THE COURT: Why don't we do this: Can we skip down  
5 to item 26, and then you go get that correspondence, and you  
6 show -- Mr. Schultz, you get out there with him, and you all  
7 resolve this as to whether it was agreed to or not, and then we  
8 can deal with that, see if there's any misunderstanding about  
9 it.

10 If there's a misunderstanding and it wasn't agreed to  
11 and it's still being offered, then I need to rule on whether or  
12 not it can come in. You all have done a very good job in  
13 getting a lot of this stuff ready for trial, and it's not  
14 unusual that in the course of dealing with large litigations,  
15 sometimes mistakes get made. If they get made, we need to deal  
16 them at the time, so let's see if we can get started.

17 MR. SCHULTZ: With respect to the correspondence, we  
18 don't have access to the correspondence that dates back to when  
19 we had the meet-and-confer conferences regarding this, so I  
20 don't know if I can resolve it at the courthouse.

21 THE COURT: I think he said he had a copy of it. Go  
22 look and see, and, you know, if you can't, there are ways to  
23 skin cats. Let's go. We're going to try this one and see what  
24 happens. If it doesn't work, we'll move on, and, fortunately,  
25 this is something we have pretty good control over and can work

1 || it out.

2 It goes all the way through item 25. Do you have --  
3 Mr. Schultz, do you have a copy of the transcript so that you  
4 can know what you are looking at out there?

5 MR. STRAPP: I have a copy of the transcript.

6 THE COURT: Okay, that's good. Share. Okay, we'll  
7 pick up -- can you do that, sir, get it over to 26?

8 MR. GREER: Yes, sir.

9                   THE COURT: Yes, sir, go ahead and get it there, and  
10 we'll go from there.

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12 || (Transcript continued on page 933.)

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